Supreme Court, U.S.
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No. 97-692

In The

Supreme Court of the United States

October Term, 1997

BETTY WORLEY, as administratrix of the Estate of Roy E. Worley, deceased; and as next friend for the children of the deceased, Christopher Worley and Robert Worley, as the next of kin under the laws of the State of Georgia, *et al.*,

Petitioners,

v.

RICHMOND COUNTY, GEORGIA, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT OF CASE

On January 15, 1992, the petitioners filed this civil rights action in the United States District Court for the Southern District of Georgia against the respondents pursuant to 42 U.S.C. § 1983, 1985(3), 1988, and the First, Fourth, Fifth, and Fourteenth Amendments of the United States Constitution. Petitioners' complaint also contained various state law claims. On September 15, 1993, the Honorable Dudley H. Bowen, Jr. of the United States District Court for the Southern District of Georgia granted the respondents' motion to dismiss on the grounds that same did not sound in federal constitutional tort. Thereafter, the petitioners filed a notice of appeal to the Eleventh Circuit Court of Appeals.

On January 24, 1995, the Eleventh Circuit Court of Appeals issued an unpublished per curiam opinion vacating the District Court's order dismissing plaintiffs' complaint and remanding said case for further proceedings. The Eleventh Circuit instructed the District Court on remand to require the petitioners to replead their complaint. The Eleventh Circuit further instructed the petitioners, upon amending their complaint, to delete any claims under 42 U.S.C. § 1985(3), and 1988. The Eleventh Circuit further instructed the petitioners to delete any claim for injunctive relief. *Worley v. Richmond County, et al.*, U.S. Court of Appeals for the Eleventh Circuit, Case Number 93-9226.

Thereafter, in accordance with the instructions from the Eleventh Circuit Court of Appeals, the District Court entered an order requiring the petitioners to amend their

complaint and on March 27, 1995, the petitioners filed their first amended complaint.

The petitioners' amended complaint set forth four claims against the respondents. Petitioners' first claim for relief is founded upon an alleged violation of petitioners' rights under the Fourth Amendment of the United States Constitution. Petitioners' second claim alleges the respondents violated their rights under the Fourteenth Amendment of the United States Constitution. The third claim in petitioners' complaint alleges a state law negligence claim against the respondent sheriff. Petitioners' fourth claim is based upon alleged assault on a suspect by the respondent Baldwin resulting in injuries to the petitioners.

The respondents once again filed a motion to dismiss for failure to state a claim and on November 21, 1995, the District Court entered an order granting the respondents' motion to dismiss in its entirety dismissing all of petitioners' claims, both federal and state. Once again, the petitioners appealed this decision to the Eleventh Circuit Court of Appeals.

On July 17, 1997, the United States Court of Appeals for the Eleventh Circuit entered an unpublished per curiam opinion affirming the District Court in its entirety. On or about October 15, 1997, the petitioners filed their petition with this Honorable Court for a writ of certiorari.

COUNTERSTATEMENT OF FACTS

In the order granting the respondents' motion to dismiss the petitioners' first amended complaint, the District Court correctly noted that the following were the only factual assertions in the amended complaint specifically regarding Deputy Baldwin's conduct:

> That Deputy Baldwin maintained the 100 mph pursuit into a corner, the danger of which Baldwin knew or should have known, causing the suspects' [sic] car to cross the center line of the highway and crash into the car in which the plaintiffs' decedents and plaintiff Conway Rice were riding.
>
> That defendant Baldwin knew, or should have known, that at 100 mph the oncoming curve was tantamount to a road block for the suspect, that the suspect would go out of control and crash into oncoming vehicles in the outside lane of the curve. (Petitioners' petition for writ of certiorari, App. 27-28)[1]

In their petition before this Honorable Court, the petitioners set out factual assertions which are nowhere contained in their amended complaint. For example, the petitioners indicate in their petition that "at one or more times during the chase, but before the crash, the vehicle

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[1] In the petition, the petitioners contend that they could not allege any further facts because the District Court stayed discovery pending a ruling on the motion to dismiss. However, the District Court stayed discovery pursuant to a consent order agreed to by all parties.

being chased almost lost control, a fact which the defendant officer knew and reported . . . " (Petition for writ of certiorari at page 12)

The petitioners further set out in their petition before this Honorable Court the following factual assertion which is supposedly contained within their complaint: "defendant officer Baldwin and the unknown superiors were in radio contact throughout the chase, which lasted long enough for supervisory intervention." (Petitioners' petition for writ of certiorari at page 12) This particular factual assertion is nowhere contained in the petitioners' amended complaint filed in the District Court.

The petitioners further state in their petition that "in spite of the circumstances (vision restricted by darkness, a two lane road with a known dangerous curve, a suspect unfamiliar with a stolen car) . . . " (Petitioners' petition at page 12) This is another factual assertion which is nowhere contained in the petitioners' amended complaint filed in the District Court.

The petitioners in their petition as well as in their amended complaint also make certain arguments as though they were factual assertions. For example, the petitioners argue and allege that the chase lasted long enough for supervisory intervention, but there was none. However, there is no factual allegation in petitioners' amended complaint as to how long the chase lasted or the length of time necessary for supervisory intervention.

The petitioners argue and allege that given the history and nature of chases, the longer they last the more

inevitable an accident. There is also no factual allegation in petitioners' amended complaint supporting this argument.

Finally, petitioners argue and allege that it was and is the officer who controls the speed and duration of the chase. This is not only an argument which is wholly unsupported by any factual allegations of plaintiffs' complaint but also an unreasonable and illogical allegation. The officer was by no means the lead vehicle in the chase and, obviously, would prefer the chase to occur at the lowest speeds possible. It is illogical to assume that if the pursuing vehicle slows down that the vehicle being pursued will do the same. In fact, just the opposite is true. If the fleeing vehicle slows down, the police officer obviously will slow down as well. Furthermore, courts have held just the opposite to be the fact. *See, Jackson v. Oliver,* 514 N.W. 2d 195 (Mich. 1995) (fleeing suspect controls the speed of chase).

These "factual" allegations by petitioner should be considered by the Court as merely argument on behalf of the petitioners, not the type of material factual allegations which are accepted as true for the purpose of a motion to dismiss.

There is no allegation by the petitioners in their amended complaint that there was any contact between the respondent deputy Baldwin's vehicle and the vehicle of either the suspect or the petitioners at any point.

ARGUMENT AND CITATION OF AUTHORITY: REASONS FOR DENYING THE WRIT

I. *Lewis v. Sacramento County*

The petitioners argue to this Honorable Court that the writ should be granted in this case because of its similarity with *Lewis v. Sacramento County*, 98 F.3d 434 (9th Cir. 1996), *cert. granted*, No. 96-1337. However, the *Lewis* case is completely inapposite factually with the case at bar and any decision in *Lewis* will have no impact on the holding in this case.

Lewis v. Sacramento County involves a particularly egregious case in which a police vehicle crashed into a juvenile on a fleeing motorcycle at high speed under circumstances in which virtually no crime had been committed by the juveniles on the motorcycle. The instant case involved a collision between the fleeing suspects and the vehicle in which the petitioners were passengers. The pursuing police officer in this case never lost control of his vehicle and was in no way involved in the collision. Furthermore, in this case the respondent police officer was pursuing a suspect in a stolen vehicle and therefore the only method to apprehend the suspect was to stop the vehicle. Merely obtaining the tag number of the stolen vehicle would not have led to the apprehension of the suspect.

Lewis v. Sacramento was also a qualified immunity decision. This particular case however was not decided on the basis of qualified immunity. In fact, neither the District Court order granting the respondents' motion to dismiss nor the Eleventh Circuit Court of Appeals' opinion at any time even mentions qualified immunity.

It is further respectfully submitted that even if this Honorable Court in the *Lewis* case sets out a definite legal standard of conduct for substantive due process claims under the Fourteenth Amendment in a police pursuit case, it will have no bearing on the case at bar. Regardless of what standard is applied to this case, the petitioners cannot meet its burden of a Fourteenth Amendment substantive due process claim. There is no reported decision of any Circuit Court of Appeals to the knowledge of defense counsel, regardless of what standard is used, which finds a Fourteenth Amendment substantive due process violation in a police pursuit case when the pursuing police officer is not involved in the collision such as what occurred in this case. Regardless of whether one applies a "deliberate indifference" standard, "shocks the conscience" standard, "deliberate indifference" standard, or "reckless disregard" standard, petitioners' Fourteenth Amendment claim fails as a matter of law.

In cases involving much more egregious conduct on the part of the pursuing police officer, the Circuit Court of Appeals have time and time again found no Fourteenth Amendment violation regardless of the particular standard applied. *See, Temkin v. Fredrick County Comm'rs*, 945 F.2d 716 (4th Cir. 1991) (shocks the judicial conscience); *Cannon v. Taylor*, 782 F.2d 947 (11th Cir. 1986) (more than gross negligence); *Webber v. Medford*, 43 F.3d 1340 (10th Cir. 1994) (reckless indifference); *Jones v. Sherrill*, 827 F.2d 1102 (6th Cir. 1987) (gross negligence and outrageous conduct).

It is therefore respectfully submitted that the resolution of the *Lewis v. Sacramento County* case will have no bearing on this particular case.

II. No Conflict Amongst the Circuits as to Individual Liability of Respondent Baldwin

There is no conflict among the various Circuit Courts of Appeals as to the individual liability of the respondent deputy Baldwin in this case. Therefore this case does not meet the requirements of Rule 10(a) of the Rules of the Supreme Court.

As set out above, there is no Federal Circuit Court opinion which found a Fourteenth Amendment substantive due process violation under the factual circumstances presented in this case (suspect's fleeing vehicle loses control and strikes third party). Although there may be slight differences in the nomenclature used to describe the standard used by the various Circuit Courts in evaluating a Fourteenth Amendment substantive due process claim, the facts in this case simply do not rise to the level under any standard that has ever been enunciated by any Circuit Court of Appeals (see supra).

With regard to petitioners' Fourth Amendment claim, there is a consensus not only among the various Circuit Courts of Appeals but also from prior decisions of this Honorable Court that the petitioners were not seized under the facts as alleged in the first amended complaint and therefore the petitioners have no Fourth Amendment claim. *See, Brower v. County Inyo*, 289 U.S. 593, 109 S.Ct. 1378, 103 L.Ed. 2d 628 (1989); *California v. Hodari d*, 499 U.S. 621, 111 S.Ct. 1547, ___ L.Ed. 2d ___ (1991); *Horta v. Sullivan*, 4 F.3d 2 (5th Cir. 1993); *Galas v. McKee*, 81 F.2d 200 (6th Cir. 1986); *Jones v. Sherrill*, 827 F.2d 1102 (6th Cir. 1987); *Campbell v. White*, 916 F.2d 421 (7th Cir. 1990), *cert. denied*, 499 U.S. 922 (1991); *Roach v. City of Fredricktown*,

882 F.2d 294 (8th Cir. 1989); *Patterson v. City of Joplin*, 878 F.2d 262 (9th Cir. 1989); *Apodaca v. Rio-Arriba County Sheriff's Department*, 905 F.2d 1445 (10th Cir. 1990).

There is absolutely no authority to the contrary. The only cases which hold that there is a Fourth Amendment seizure in a police pursuit case is where there is an unreasonable and improper contact by the police officer's vehicle with the plaintiff's vehicle. *See, Brower v. County of Inyo, supra; Adams v. St. Lucie County Sheriff's Dept.*, 962 F.2d 1563 (11th Cir. 1992). However the petitioners have not alleged any such improper and unreasonable contact between the vehicle being operated by the respondent Deputy Baldwin and the vehicle in which the petitioners and petitioners' decedent were riding.

Since there is no conflict among the circuits as to the petitioners' claims under the Fourth and Fourteenth Amendments, then this case does not meet the requirements of Rule 10 and the petition should be denied.

III. Supervisory Liability

The issue of supervisory liability in this case also does not meet the requirements of Rule 10 of the Rules of the Supreme Court.

Both the District Court and the Circuit Court of Appeals relied upon the Supreme Court decision in *City of Los Angeles v. Heller*, 475 U.S. 796, 106 S.Ct. 1571, 89 L.Ed. 2d 806 (1986) in finding that the respondents were entitled to a dismissal of the petitioner's claims against the supervisory personnel and the employing entity. In

Heller, this Honorable Court held that where the individual officer involved did not commit any constitutional deprivation, then the supervisory defendants cannot be held liable as a matter of law. This holding is based on simple common sense. Obviously, if the individual officer did not violate any rights of the petitioners, then no custom, policy, or procedure of the supervisory defendants could be the "cause" or "moving force" of a constitutional violation. The deficiency or soundness of the alleged policy, custom, or procedure of the supervisory personnel simply becomes irrelevant.

Since the decision of the District Court and the Eleventh Circuit Court of Appeals relied upon a Supreme Court decision, it is therefore respectfully submitted that this issue does not meet the requirements of Rule 10 and the petition must be denied on this basis as well.

IV. Qualified Immunity and Adequate State Remedy

Two other grounds which the petitioners apparently urge in support of their petition for writ of certiorari are qualified immunity and no adequate state tort remedy.

On page 16 of the petitioners' petition, the petitioners indicate that there is a conflict between the Eleventh and Ninth Circuit. The petitioners erroneously assert that the Eleventh Circuit granted qualified immunity to the pursuing officer in this case while the Ninth Circuit denied qualified immunity to the pursuing officer in the *Lewis* case. As previously pointed out, the Eleventh Circuit did not base its decision concerning the individual liability of the pursuing officer in this case on qualified immunity.

Secondly, the *Lewis* case is completely inapposite factually to the case at bar. In *Lewis*, the pursuing police officer collided in high speed with the fleeing juveniles on their motorcycle. In this case there is no dispute and no allegation that the pursuing officer did not lose control of his vehicle or was otherwise involved in the collision.

On page 10 of the petitioners' petition, the petitioners insinuate to this Court that they have no available remedy under state tort law. However, nothing could be further from the truth. While it is true that under Georgia law, counties and, under certain circumstances, law enforcement officers have immunity, such immunity only extends to negligent acts. See *Logue v. Wright*, 260 Ga. 206, 392 S.E. 2d 235 (1990). However, immunity is not available to a law enforcement officer if the injured party can demonstrate an "intent to injure" on the part of the officer. See *Merrow v. Hawkins*, 266 Ga. 390, 467 S.E. 2d 336 (1996).

Furthermore, the petitioners had a more than adequate state law tort remedy if they had merely brought an action against the person who actually caused their injuries and damages, i.e., the fleeing felony suspect who crashed his car into the petitioners' vehicle. Instead, the petitioners attempt to misconstrue and pervert constitutional law in an effort to bring an action against an innocent police officer who was merely doing his job in attempting to apprehend a fleeing felon. However, the respondents recognize that it is trendy and popular to attempt to blame all of societies' ills upon the government and public servants such as local Sheriff's Departments and deputy sheriffs working for them. However, just because the petitioners brought suit against an innocent party as opposed to the guilty party does not

mean that they had no adequate state tort remedy. The petitioners' problem in this case is not that they have no remedy under state or federal law. Their problem is the facts of the incident do not indicate any liability under state or federal law in regard to the respondents.

CONCLUSION

It is respectfully submitted that the District Court and the Eleventh Circuit Court of Appeals correctly held that the plaintiffs' first amended complaint was subject to dismissal for failure to state a claim upon which relief can be granted. There is no meaningful split among the various Circuit Courts of Appeals that would have any bearing on the outcome of this case. The decisions of the Courts below were based upon ample prior case law from all the Circuit Courts of Appeals and this Honorable Court. This case simply does not meet the requirements of Rule 10 of the Rules of the Supreme Court for the granting of a writ of certiorari. Consequently, the writ should be denied.

Respectfully submitted this 11 day of November, 1997.

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